



U.S. Department of Justice

United States Attorney

Eastern District of Pennsylvania

615 Chestnut Street

Suite 1250

Philadelphia, Pennsylvania 19106-4476

(215) 861-8200

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**DEPARTMENT OF JUSTICE ANNOUNCES \$15 MILLION SETTLEMENT WITH
LOCAL BANK ACCUSED OF CONSUMER FRAUD**

PHILADELPHIA – First Bank of Delaware today was charged with, and settled, civil claims brought by the United States Department of Justice in connection with a scheme to defraud consumers through the Internet and other means. Under a settlement reached with First Bank of Delaware, the bank will pay a civil money penalty of \$15 million to the United States Treasury. The bank also will maintain an account with \$500,000 to pay consumer claims arising from the alleged conduct. Today’s settlement and related regulatory actions were announced by United States Attorney Zane David Memeger, Department of the Treasury Financial Crime Enforcement Network (“FinCEN”) Director Jennifer Shasky Calvery, and the Federal Deposit Insurance Corporation (“FDIC”). The Department of Justice’s allegations against the bank and the terms of that settlement are set forth in a Civil Complaint and a Settlement Agreement filed in the United States District Court for the Eastern District of Pennsylvania. See [United States v. First Bank of Delaware](#), Civil Action No. 12-CV-6500 (E.D. Pa.).

The Department of Justice alleges that from 2009 to 2011, First Bank of Delaware violated the Financial Institutions Reform, Recovery and Enforcement Act (“FIRREA”) by originating withdrawal transactions on behalf of fraudulent merchants and causing money to be taken from the bank accounts of consumer victims. The government alleges that the bank knew – or turned a blind eye to the fact – that consumer authorization for the withdrawals had been obtained by fraud.

“We are committed to protecting consumers from unscrupulous merchants who use Internet and telemarketing schemes to defraud them. Such merchants need payment processors and banks to help them obtain the victim consumers’ money. This settlement should serve as notice to the banking community that when banks allow themselves to be used to perpetrate these frauds, we will target our enforcement efforts accordingly to hold the banks accountable,” stated United States Attorney Memeger.

“To make money, First Bank of Delaware entered into risky lines of business and chose to disregard its Bank Secrecy Act responsibilities,” said FinCEN Director Jennifer Shasky Calvery. “As a result of its failure to implement systems and controls to identify and report

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suspicious activities, as required by the BSA, financial predators were able to victimize consumers.”

Banks are a critical key in many consumer fraud schemes. After a fraudster obtains bank account information from a consumer, the fraudster still needs to gain access to the banking system in order to take the consumer’s money. Fraudulent merchants have a difficult time opening their own bank accounts because of laws designed to prevent criminals from accessing the banking system. To overcome this obstacle, fraudulent merchants often obtain indirect access to the banking system through a third-party payment processor that can more easily establish a relationship with a bank.

The Department of Justice alleges that First Bank of Delaware established direct relationships with several fraudulent merchants and third-party payment processors working in cahoots with a large number of additional fraudulent merchants. On behalf of the processors and fraudulent merchants, First Bank of Delaware originated hundreds of thousands of debit transactions against consumers’ bank accounts. The payment processors named in the Complaint include Automated Electronic Checking, Inc., Check Site, Inc., Check 21.com, LLC, and Landmark Clearing, Inc.¹

First Bank of Delaware originated many of the debit transactions using “remotely-created checks” – a transaction instrument widely-known in the banking industry and by the consumer protection and law enforcement community to be favored by fraudulent merchants. At the time of the conduct alleged, First Bank of Delaware and the rest of the banking industry were well-aware of the consumer fraud risks posed by third-party processors and remotely-created checks.²

¹ In January 2012, the Federal Trade Commission obtained a permanent injunction and other relief in a federal court action against Landmark Clearing and its owners. See www.ftc.gov/opa/2012/01/landmark.shtm.

² Financial institutions interested in industry guidance concerning third-party payment processor risk should consider: “Advisory: Risk Associated with Third-Party Payment Processors,” Financial Crimes Enforcement Network, Department of the Treasury (“FinCEN”) (FIN-2012-A010) (October 22, 2012); “Payment Processor Relationships – Revised Guidance,” Federal Deposit Insurance Corporation (FIL-3-2012) (January 31, 2012) (“*Financial institutions that fail to adequately manage [third-party payment processor] relationships may be viewed as facilitating a payment processor’s or merchant client’s fraudulent or unlawful activity and, thus, may be liable for such acts or practices*” (italics in original)); “Managing Risks in Third-Party Payment Processor Relationships,” FDIC Supervisory Insights Journal (Summer 2011); FDIC Guidance of Payment Processor Relationships (FDIC FIL-127-2008) (November 7, 2008); FDIC Guidance for Managing Third-Party Risk (FIL-44-2008) (June 2008); Payment Processor, Risk Management Guidance (continued...)

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The Department of Justice alleges that First Bank of Delaware was aware of significant red flags warning the bank that the debit transactions were tainted by fraud. For example, First Bank of Delaware ignored high rates of returned or charged-back debit transactions. This is a significant fraud indicator about which federal bank regulators have consistently warned the banking industry. First Bank of Delaware's third-party payment processors had aggregate return rates for remotely-created checks exceeding 50 percent during the period 2009 to 2011, compared to the average return rate of one-half of one percent for all checks processed by the Federal Reserve. Where a high number of purportedly legitimate transactions are rejected by consumers and their banks, it is likely that consumers are being defrauded.

Congress enacted FIRREA in 1989 as part of a comprehensive legislative plan to reform and strengthen the banking system and the federal deposit insurance system that protects the public from bank failures. FIRREA provides that the United States may recover civil penalties of up to \$1 million per violation of certain criminal statutes, or, for a continuing violation, up to \$1 million per day or \$5 million, whichever is less. The statute further provides that the penalty can exceed these limits to permit the United States to recover the amount of any gain to the violator, or the amount of the loss to victims, up to the amount of the gain or loss. The Department of Justice alleges that First Bank of Delaware engaged in wire fraud affecting federally-insured financial institutions by originating debit transactions for third-party payment processors and fraudulent merchants who the bank knew were engaged in fraud against consumers, or that the bank remained wilfully blind to that fact.

Under the settlement reached between the Department of Justice and First Bank of Delaware, the bank will pay a \$15 million penalty to the United States Treasury. The payment also satisfies penalties imposed upon the bank by the FDIC and FinCEN, each of which has entered into a separate agreement with the bank relating to Bank Secrecy Act violations. The bank also will maintain an account with \$500,000 to pay consumer claims for losses arising from the conduct alleged in the Complaint. Any money remaining in the restitution account after all consumer claims have been paid will be transferred to the United States Treasury.

First Bank of Delaware has an office at 1000 Rocky Run Parkway, Wilmington, Delaware, and headquarters and an operations center at 50 South 16th Street, Philadelphia, PA 19102. On October 23, 2012, the bank's shareholders voted to dissolve the bank.

²(...continued)
(OCC-2008-12) (April 24, 2008); Federal Financial Institutions Examination Council Bank Secrecy Act Anti-Money Laundering Examination Manual: Third-Party Payment Processors – Overview (2010).

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The case was investigated and prosecuted for the Department of Justice by Assistant United States Attorneys Joel M. Sweet, Susan Dein Bricklin, and Judith A. Amorosa, and United States Attorney's Office Auditor Allison Barnes, in coordination with the Federal Deposit Insurance Corporation and FinCEN.

Today's announcement is part of efforts by the Consumer Protection Working Group of President Obama's Financial Fraud Enforcement Task Force, which was established to wage an aggressive, coordinated and proactive effort to investigate and prosecute financial crimes. The Consumer Protection Working Group brings together federal, state, and local law enforcement agencies, regulators, and other stakeholders to protect consumers from fraud that can devastate victims and cause widespread economic harm. Consumer fraud comes in many forms and can be found in fraud on our nation's service members, payday lending, high-pressure telemarketing schemes, internet scams, business opportunity scams, and unscrupulous third party payment processors. Scam artists often target vulnerable populations such as the elderly, students, the unemployed, and those already struggling with debt. Through this partnership, the Consumer Protection Working Group is working to strengthen consumer protection efforts, leverage resources, enhance civil and criminal enforcement of consumer fraud, and educate the public in an effort to prevent consumers from being victimized. To learn more about the President's Financial Fraud Enforcement Task Force, please visit www.stopfraud.gov.

**UNITED STATES ATTORNEY'S OFFICE
EASTERN DISTRICT, PENNSYLVANIA
Suite 1250, 615 Chestnut Street
Philadelphia, PA 19106**

**Contact: PATTY HARTMAN
Media Contact
215-861-8525**

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